

**Bush Declaration Ex. V**

**TX 9191**

**From:** Jonathan Schwartz <jis@sun.com>  
**Sent:** Fri Feb 09 2007 21:39:10 PST  
**To:** Simon Phipps <simon.phipps@sun.com>  
**CC:**  
**Subject:** Re: Request for assistance with Apache's Java SE TCK license  
**Attachments:**

**Importance:** Normal  
**Priority:** Normal  
**Sensitivity:** None

so ... what's the issue?

On Feb 9, 2007, at 9:40 PM, Simon Phipps wrote:

> /Much/ appreciated. Thank-you.  
 >  
 > On Feb 9, 2007, at 21:29, Jonathan Schwartz wrote:  
 >  
 >> Sorry for being incommunicado - thanks for your note.  
 >>  
 >> Just wanted to let you know I got your note, Rich and I are aware  
 >> of the issues, and will be sure we get a response to you asap.  
 >>  
 >> Again, apologies for the delay...  
 >>  
 >> Jonathan  
 >>  
 >> On Feb 4, 2007, at 3:33 PM, Geir Magnusson Jr. wrote:  
 >>  
 >>> Dear Jonathan,  
 >>>  
 >>> My name is Geir Magnusson Jr, and I'm the officer of the Apache  
 >>> Software Foundation charged with matters relating to the JCP. I  
 >>> am also the PMC Chair of the Apache Harmony project. We've  
 >>> exchanged mail in the past related to your blog (we argued about  
 >>> razors and handles) and we actually met once at an OSCON.  
 >>>  
 >>> Over the past 5+ months, the Apache Software Foundation has been  
 >>> attempting to secure an acceptable license from Sun for the TCK  
 >>> for Java SE, needed by the Apache Harmony project. By  
 >>> "acceptable", I mean a TCK license that does not attempt to limit  
 >>> the terms under which we distribute our software, and  
 >>> additionally, conforms to the terms of the JSPA and the public  
 >>> promises of the so-called "Apache Compromise", in which Sun  
 >>> pledged that Sun-led JSRs would be implementable in open source.  
 >>> Our negotiations started out well last August, but became  
 >>> difficult in October, and currently we are at an impasse.  
 >>>  
 >>> I believe you are our last chance for resolving this matter  
 >>> privately and quickly. Critics predicted that Sun would use  
 >>> control of the TCK as a means to harm and impede the Harmony

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

**TRIAL EXHIBIT 9191**

CASE NO. 10-03561 WHA

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BY \_\_\_\_\_

DEPUTY CLERK

>>> project, a notion that has become exceedingly hard to credibly  
 >>> refute. Besides holding back the Harmony project, this issue  
 >>> poses serious risk to the credibility of the JCP as a standards  
 >>> organization, and the reputation of Java as an open ecosystem.  
 >>> Further, it also puts at risk the long-standing positive  
 >>> relationship between the Sun and the ASF (and I'd speculate the  
 >>> broader open source community), something I believe is valuable  
 >>> and should be preserved.

>>>  
 >>> The core problem is Sun is attempting to place limitations on the  
 >>> field of use of tested, compatible implementations of Java SE  
 >>> produced by the Harmony project. The reason given is that free  
 >>> availability of such software from the ASF would negatively  
 >>> impact Sun's embedded software business.

>>>  
 >>> We believe that such limitations are a violation of the  
 >>> fundamental philosophy of the JCP as well as the governance  
 >>> document, the JSPA, to which Sun is a signatory, where all  
 >>> necessary IP must be licensed royalty-free to any compatible  
 >>> implementation of a specification. They are also contrary to  
 >>> Sun's public promise that any Sun-led specification would be  
 >>> fully implementable and distributable in open source. It  
 >>> shouldn't have to be mentioned that "fully implementable"  
 >>> includes passing the TCK, as required by the specification  
 >>> license. Just as important to us, limitations on field of use is  
 >>> contrary to the basic principles inherent in open source  
 >>> licensing, and therefore these limitations would prevent  
 >>> distribution under an open source license.

>>>  
 >>> Our objections to the offered license are clear and valid. Even  
 >>> if it could be argued that there is room for debate about the  
 >>> specific meaning of phrases in the JSPA, the spec license, the  
 >>> TCK license, or the Apache Compromise, I think we both understand  
 >>> that the the situation we are facing is grossly in conflict with  
 >>> the basic IP philosophy of the JCP, the concept of Java as an  
 >>> open standards-based ecosystem, and Sun's public promises. The  
 >>> JCP was clearly designed to prevent any single actor from being  
 >>> able to exhibit this sort of market control. Additionally, it's  
 >>> contrary to the spirit of open source, the respect of which is a  
 >>> key element in Sun's business strategy.

>>>  
 >>> Through Apache Harmony, the ASF entered into the specification  
 >>> license in good faith, with the expectation that Sun as the spec  
 >>> lead would reciprocate. Our intention has always been to produce  
 >>> a certified compatible implementation of Java SE distributed  
 >>> under the Apache License. To do so, we need the TCK. Please  
 >>> help us rectify this situation immediately.

>>>  
 >>> I look forward to your response.

>>>  
 >>> geir

>>>  
 >>> Geir Magnusson Jr.  
 >>> VP, Java Community Process

>>> Apache Software Foundation

>>> +1 203 665 6437

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